

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Pia Smith	Team: Team # 4	CCRB Case #: 200503310	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 03/26/2005 9:55 PM	Location of Incident: C/O Pitkin and Pennsylvania Avenues, Brooklyn	Precinct: 75	18 Mo. SOL 9/26/2006	EO SOL 9/26/2006	
Date/Time CV Reported Tue, 03/29/2005 1:39 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 03/29/2005 1:39 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Mathew Reich	30079	933211	075 PCT
2. POM Stephen Mcphail	30557	933007	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Mathew Reich	Abuse: PO Mathew Reich stopped and questioned § 87(2)(b) [REDACTED]	
B.POM Mathew Reich	Discourtesy: PO Mathew Reich spoke rudely to § 87(2)(b) [REDACTED]	
C.POM Mathew Reich	Abuse: PO Mathew Reich threatened to arrest § 87(2)(b) [REDACTED]	
D.POM Mathew Reich	Abuse: PO Mathew Reich refused to provide his name and shield number to § 87(2)(b) [REDACTED]	
E.POM Stephen Mcphail	Abuse: PO Stephen Mcphail refused to provide his name and shield number to § 87(2)(b) [REDACTED]	

Synopsis

On March 26, 2005, § 87(2)(b) and friend, § 87(2)(b) were in his van and stopped at the Exxon gas station located at the intersection of Pennsylvania Avenue and Pitkin Avenue in Brooklyn. § 87(2)(b) saw a family friend (later identified as § 87(2)(b) and the two shook hands and wished each other a Happy Easter. At this time a police officer (PO Mathew Reich) approached and accused § 87(2)(b) of having engaged in a narcotics transaction (Allegation A). PO Reich had § 87(2)(b) exit the vehicle. § 87(2)(b) protested the stop and PO Reich told him to “shut up” (Allegation B) and said that he would “put the handcuffs on him” (Allegation C). PO Reich issued § 87(2)(b) a summons for disorderly conduct. § 87(2)(b) asked the officers for their names and shield numbers, but PO Reich said, “There’s no need for that.” (Allegation D) and PO McPhail offered no response (Allegation D).

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) appeared as a walk-in complainant and was interviewed at the CCRB on March 29, 2005 (Encl. 4-4b). § 87(2)(b) stated that on March 26, 2005 at approximately 9:55 p.m., as he does every evening, he picked up his friend, § 87(2)(b) from her home and drove to the Exxon gas station located at Pitkin Avenue and Pennsylvania Avenue in Brooklyn where they talk and have coffee. § 87(2)(b) stated that as he pulled into the gas station, he saw a family friend whose name he had forgotten. The man was on a bicycle and spoke to § 87(2)(b) through the open van window. The men shook hands and wished each other a Happy Easter. At this time, an officer whom § 87(2)(b) identified as PO Reich approached him on his driver’s side and told him to exit the van. An unidentified officer stood on the passenger’s side and instructed § 87(2)(b) to exit as well. PO Reich accused § 87(2)(b) of having passed something to the other man on the bicycle. § 87(2)(b) vehemently denied having engaged in any illegal activity, but PO Reich called him a “liar.” The officer’s unidentified partner used a flashlight and looked inside of the van and PO Reich performed the same action on the driver’s side, however, PO Reich looked under the seats as well. No contraband was recovered. § 87(2)(b) stated that his friend remained there at the gas station and witnessed the encounter. § 87(2)(b) stated that PO Reich told him that if he did not “shut up” he would “put the cuffs on him.” PO Reich then pointed in § 87(2)(b)’s face and said, “Shut up, shut up, shut up.” PO Reich instructed § 87(2)(b) to go to the rear of his van, but § 87(2)(b) refused. § 87(2)(b)’s friend recommended that § 87(2)(b) call the “Civilian Review Board.” § 87(2)(b) provided his license insurance and registration card upon PO Reich’s request. PO Reich prepared a summons for disorderly conduct and issued it to § 87(2)(b). As the officers were about to return to their patrol car, § 87(2)(b) asked them for their names and shield numbers since it was dark and he could not see the information. PO Reich replied, “There’s no need for that” and the partner did not offer any response. Both officers returned to their patrol car and drove away.

Results of Investigation

Witness Identification

§ 87(2)(b) was unable to identify the male on the bicycle by name, but indicated that the person was the son of a family friend. § 87(2)(b) was able to contact this person and informed him of the complaint. The man contacted the undersigned and identified himself only as § 87(2)(b) § 87(2)(b)

§ 87(2)(b) § 87(2)(b) stated that he would contact the undersigned if he would be able to cooperate, but § 87(2)(b) did not do so and offered no contact information.

Witness Interview

§ 87(2)(b) was interviewed at the CCRB on March 29, 2005 (Encl.6-6a). § 87(2)(b) stated that § 87(2)(b) picked her up in his van as he does nightly and they went to the gas station to sit and talk. § 87(2)(b) recalled that § 87(2)(b) saw a friend who was on a bicycle and the two wished each other a Happy Easter and shook hands through § 87(2)(b)'s open van window. § 87(2)(b) stated that two officers suddenly appeared, one had § 87(2)(b) exit and the other instructed § 87(2)(b) to exit as well. § 87(2)(b) recalled that § 87(2)(b) "went into a rage" on the other side of the van and she heard that the other officer accused him of giving drugs to the man on the bicycle. § 87(2)(b) recalled that she and § 87(2)(b)'s friend pleaded with him to refrain from arguing with the officers, but he did not do so. § 87(2)(b) observed the officer on her side look in the van with a flashlight. § 87(2)(b) believed that the officers had the right to stop and question him about his activities and he should have cooperated. § 87(2)(b) stated that § 87(2)(b) was "crazy and jumping all in they faces and acting guilty and the officers were trying to be nice to him." § 87(2)(b) stated that the officers only treated him the way they did because he did not treat them with respect. § 87(2)(b) told § 87(2)(b) to write the officers' information down if he wanted it, but she did not hear either officer refuse to provide their name or shield number, or say "there's no need for that."

Police Officer Interviews

PO Mathew Reich was interviewed at the CCRB on April 29, 2005 (Encl. 10-10a). PO Reich recorded the following memo book activity: 21:55- C summons # § 87(2)(b) § 87(2)(b) dis-Con yelling and screaming and waving hands at PO (9-9b).

PO Mathew's Reich's CCRB Interview

PO Mathew Reich stated that he and his partner were assigned to sector A and were on patrol in the vicinity of Pitkin and Pennsylvania Avenues when he observed a driver in a van (later identified as § 87(2)(b)) conduct what he believed was a hand to hand transaction with another male who was on a bicycle at an Exxon gas station on the corner to the left. PO Reich however could not immediately determine what § 87(2)(b) had given to the man since they were approximately twenty yards away. When the man on the bike saw PO Reich approaching, he fled on his bike and no pursuit was made even though his actions raised their suspicions. PO Reich stated, "When the gentleman took off from us running, people just don't run. When there are two subjects, we cannot pursue everyone." PO Reich recalled that there was a female in the front passenger's where PO McPhail was positioned and PO Reich positioned himself on the driver's side and instructed § 87(2)(b) exit his van at which time he became "very combative and began yelling and screaming" at him and his partner. PO Reich said he could not recall what § 87(2)(b) was saying but believed he was "cursing and screaming" that he had only been stopped "because he's fucking white" and called the officers "pieces of shit" and said that he would "have their asses." § 87(2)(b) also allegedly told PO Reich that he was going to make the female in the car file a complaint that they had sexually harassed her. PO Reich stated that they had to "raise their voices a little" and become stern with him and informed him that they stopped him because they observed him engage in a hand to hand narcotics transaction. PO Reich stated that when he questioned § 87(2)(b) about his activities he replied, "It's none of your fucking business." PO Reich was apparently satisfied with the response and made no further inquiries and stated, "There's not much we can do at some points."

PO Reich stated that they did not search the van, but did look inside for any contraband. PO Reich stated that he and his partner used their flashlights and PO McPhail looked through the passenger's side window to see if there were any other occupants in the rear of the van. PO Reich stated, "We did explain that if there was any contraband that was handed over, there would be an arrest." § 87(2)(b) was not searched or frisked. PO Reich said they told § 87(2)(b) what would have happened if he did have narcotics in his possession, but did not threaten him with arrest or tell him that they "would put the cuffs on him." PO Reich said he did not tell § 87(2)(b) to "shut up" but they did tell him to "lower his voice and to stop

his hand gestures.” PO Reich stated that he did subsequently issue § 87(2)(b) a disorderly conduct summons because of his actions and behavior. According to PO Reich, § 87(2)(b) continued to yell and scream and § 87(2)(b) jumped his vehicle, we jumped in ours and we left.” PO Reich did recall that prior to leaving, § 87(2)(b) did request their names and shield numbers and PO Reich stated that he verbally provided his shield number and explained that his name and tax were also on the bottom of the summons he received. PO Reich also stated that his partner provided his name and his shield number as well. PO Reich denied telling § 87(2)(b) that “there is no need for that” in response to his request. When asked if he ever called § 87(2)(b) a “liar” in reference to his denial of engaging in illegal activity, PO Reich replied, “No we did not.” The question was asked again this time specifying whether he personally called § 87(2)(b) a liar, and he replied, “No I did not.”

According to the officers, the female in the van did not make any comments about what was taking place and was never asked to exit the van. PO Reich stated that in his professional opinion, he believed that a hand to hand narcotics transaction was taking place although he did not observe the man on the bike pass anything to § 87(2)(b). PO Reich stated that he never learned what the item or object was that had been passed.

PO Steven McPhail was interviewed at the CCRB on June 2, 2005 (Encl. 12-12a). PO McPhail recorded the following memo book activity: 21:40 Stop 1 male c/o Pitkin and Pennsylvania male became very abrasive started swinging his hands around in a violent manner. He was given a criminal court summons by PO Reich (Encl. 11-11b). PO McPhail stated that he was partnered with PO Reich for the first time and was the recorder for the day. PO McPhail stated that they were on routine patrol and were in the vicinity of Pitkin and Pennsylvania Avenues when PO Reich suddenly pulled into the Exxon gas station located at this intersection. PO Reich exited and PO McPhail assumed that he was going to use the facilities as they have done in the past or get something from the convenience store. PO McPhail said he only exited the vehicle to stretch his legs but looked about twenty yards away and saw PO Reich engaged in a conversation with a man in a van. PO McPhail did not know what was happening so he automatically walked over to back up his partner. PO McPhail recalled seeing § 87(2)(b) who was very upset and was yelling and screaming at them. PO Reich instructed PO McPhail to “watch” § 87(2)(b) while he returned to the patrol car to prepare a summons. PO McPhail did not recall seeing PO Reich look inside of the van with a flashlight and denied that he performed this action. PO McPhail recalled that he had to employ a “command voice” and several times tell § 87(2)(b) to calm down, but when PO Reich returned with the summons he became agitated again. PO McPhail said he and PO Reich returned to the patrol car and § 87(2)(b) followed him and asked him for his name and shield number and was squinting trying to read the information. PO McPhail believed PO Reich had already gotten back into the patrol car by this time. PO McPhail said he held his badge and said, “PO McPhail 3-0-5-5-7” and then got into the patrol car and left the location. It was at this time that PO McPhail asked PO Reich what happened to prompt the encounter with § 87(2)(b). PO Reich informed PO McPhail that he observed § 87(2)(b) “pass something.” PO McPhail also learned at this time that the summons PO Reich prepared was for disorderly conduct.

Police Documents

The 75th Precinct roll call identifies Officers Mathew Reich and Steven McPhail as being assigned together for tour three on March 26, 2005 (Encl. 13-13b). PO Reich prepared a summons for disorderly conduct (240.20) and issued it to § 87(2)(b) (Encl. 8). PO Reich wrote his command, agency, squad and tax number on the summons, but failed to write his name.

Criminal Conviction History

§ 87(2)(b) has no known criminal conviction history.

Police Officer CCRB Complaint History

Neither PO Mathew Reich nor PO Steven McPhail have any substantiated allegations against them on their CCRB complaint histories.

Conclusions and Recommendations

Undisputed Facts

§ 87(2)(b) and friend § 87(2)(b) were in his van and parked at an Exxon gas station located at Pitkin and Pennsylvania Avenues in Brooklyn. PO Mathew Reich observed § 87(2)(b) and his friend shaking hands through his open van window. PO Reich pulled the patrol car into the gas station, exited and confronted § 87(2)(b) and accused him of having conducted a narcotics transaction. In protest of the stop, § 87(2)(b) became very hostile and flailed his arms, prompting PO Reich to tell him to “shut up or [he] would place the cuffs on [him].” § 87(2)(b) did not comply with the order and he was subsequently issued a summons for disorderly conduct. PO § 87(2)(b) requested both officers’ names and shield numbers. PO McPhail complied and PO Reich provided his shield number.

Credibility Assessment/Issues in Dispute

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

Allegation A: Abuse of Authority: PO Mathew Reich stopped § 87(2)(b)

In NYPD DCT No. 75254/99 Det. Michael Walsh stopped § 87(2)(b) after he was allegedly observed driving and smoking what appeared to be a brown marijuana cigarette. § 87(2)(b) exited his car and walked to a park to help friends assemble a bicycle. Det. Walsh approached § 87(2)(b) and said he observed that § 87(2)(b) had a brown-papered Jamaican cigarette in hand and not marijuana, but commenced to search him and threaten him with arrest. Assistant Deputy Commissioner Ethel H. Corcoran found that, “If the officer’s actions were reasonable at the beginning of the encounter, the scope and intensity of his subsequent conduct must be measured by the same standard. A police officer’s common law right to inquire is activated by ‘a founded suspicion that criminal activity is afoot.’ People V. Bour 40 N.Y. 2d 210 (1976).” § 87(2)(g)

Ultimately, ADC Corcoran believed § 87(2)(b) testimony that he was carrying a tool for the bike and not a marijuana cigarette or any kind of cigarette for that matter. ADC Corcoran discredited Det. Walsh and suggested that “the explanation that the cigarette was a brown papered Jamaican cigarette was tailored to justify the stop.”

PO Reich asserted that § 87(2)(b) gave something to § 87(2)(b) who immediately fled on a bicycle raising their suspicion about what might have taken place. § 87(2)(g) PO Reich however, he made no effort to pursue § 87(2)(b) instruct his partner to do so, or call for additional units to assist, but dismissed the event and stated, “When there are two subjects, we cannot pursue everyone.” § 87(2)(g)

At this juncture, PO Reich only employed minimal efforts to conduct an investigation by simply having § 87(2)(b) exit and quickly looking in the van, thus exceeding “the scope and intensity” of the initial stop. § 87(2)(g)

§ 87(2)(g)

Allegation B: Discourtesy: PO Mathew Reich spoke rudely to § 87(2)(b)

Allegation C: Abuse of Authority: PO Mathew Reich threatened to arrest § 87(2)(b)

As supported by § 87(2)(b) § 87(2)(b) was extremely verbal and argumentative, and she also supported the claim that PO Reich told him to “shut up” or he “would put the cuffs on him.” PO Reich

denied telling § 87(2)(b) to “shut up,” but said he instructed him to “lower his voice” and refrain from waving his arms. PO Reich also denied having threatened § 87(2)(b) with arrest, but said he told him that had he been found in possession of narcotics he could have been arrested. § 87(2)(g)

Allegation D: Abuse of Authority: PO Mathew Reich refused to provide his name and shield number to § 87(2)(b)

According to § 87(2)(b) upon making the request for the names and shield numbers, PO Reich replied, “There’s no need for that.” PO Reich stated that he provided his shield number, but told § 87(2)(b) that his name and tax number were on the summons, this however proved to be false as PO Reich failed to properly write his name and rank in the appropriate sections on the summons (Encl. 8). § 87(2)(g)

Allegation E: Abuse of Authority: PO Steven McPhail refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(g) PO McPhail to the best of his recollection believed that PO Reich was already inside of the patrol car when this request was made from him and to his estimation, § 87(2)(b) was only addressing him for the information. PO McPhail described how he observed § 87(2)(b) squinting to read the information on the badge so PO McPhail held his badge and stated his name and read off his shield number, “PO McPhail 3-0-5-5-7.” PO McPhail recalled hearing § 87(2)(b) shout back to § 87(2)(b) for her to get him a pen and paper to write down the information. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: